

2008

# Seadhna J. Flores vs. David G. Earnshaw : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

SEADHNA J. FLORES,

Plaintiff/Appellee,

Vs.

DAVID G. EARNSHAW,

Defendant/Appellant.

:  
Case No. 20080102-CA  
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**APPELLANT'S REPLY BRIEF**

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From Order and Judgment Entered January 14, 2008  
by the Second Judicial District Court, Weber County  
Honorable Michael D. Lyon, Presiding

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**OCT 06 2008**

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## ARGUMENT

### **I. BY EXCLUDING RELEVANT EVIDENCE, THE PARTIES WERE ASSURED OF FINDINGS THAT WERE NOT SUPPORTED BY THE EVIDENCE AND, THEREFORE, CLEARLY ERRONEOUS .**

It is evident from the Appellee's brief that he wants things both ways: In other words, admission of extrinsic evidence to vary or contradict the unambiguous terms of the parties' contract regarding "subject matter," but exclusion of the same evidence when it comes to "price." There is no way to square this approach, and this is the problem with the trial court's ruling.

The REPC was a form contract that has been used without exception in this State for many years. If it was unambiguous on the subject of price, it was unambiguous on the subject matter. Flores never demonstrated how the language of the contract was ambiguous, but only when applied to the circumstances of this case.

We demonstrated that this is the province of contract "integration," not interpretation, and it is undisputed that the parties' contract was fully integrated.<sup>1</sup> Therefore, the parties' subjective "intent" could not be the proper subject of the

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<sup>1</sup> Though it is not correct to say, as did Flores that "the Trial Court found that the REPC was fully integrated." (Pg. 7, Brief of Appellee) We demonstrated the trial court's finding that the REPC was only "partially" integrated. (R. 101) We also explained how this was the source of the trial court's erroneous ruling on contract interpretation. (Arguments, Section I, Brief of Appellant)

trial court's analysis. *See WebBank v. American General Annuity Service Corp.*, 2002 UT 88, ¶¶21, 26-26, 54 P.3d 1139

If the contract was unambiguous, the trial court should not have admitted any extrinsic evidence. However, if it was ambiguous, the trial court erred in excluding relevant evidence that bore on the alleged ambiguity (*i.e.*, the price for which the built-out condominium was to be sold).

If the goal was to reach the parties' "intent," it was wrong for the trial court to consider some but not all the evidence bearing on the subject. What we are left with is nothing resembling the parties' agreement.

There is no authority for the trial court's approach to this matter. Flores has certainly offered none. He refers this Court (pg. 8, Brief of Appellee) to his Post-Trial Memorandum, re: Extrinsic Evidence. (R. 82) (Addendum A, Brief of Appellee) However, there is nothing in that memorandum addressing this specific question.

In this regard, it is important to note that the trial court did not "find" the facts in Flores' favor. It simply found them to be sufficiently "reasonable" (R. 101) to support a determination that the contract was ambiguous. *Peterson v. Sunrider Corp.*, 2002 UT 43, ¶19, 48 P.3d 918 This serves to show what the trial

court was thinking: Exclude extrinsic evidence where it conflicted with the trial court's flawed legal reasoning regarding ambiguousness.

Therefore, this is not your typical case where the losing party objects to the trial court's weighing of conflicting evidence (though there is an aspect of that in this appeal). By purposefully excluding relevant extrinsic evidence from the determination of the parties' "intent," the parties were assured of findings that were not supported by the evidence and, therefore, clearly erroneous.

In this regard, it is also important to note that Flores has taken no exception to Earnshaw's marshalling of the evidence supporting the trial court judgment.<sup>2</sup> Even more significant, Flores has taken no exception with Earnshaw's marshalling of the evidence that the trial court refused to consider. (Pp. 8-12, Brief of Appellant)

It requires no weighing of the evidence to see how different the findings may have been if this critical evidence had been considered. For this reason, we are confident that the evidence, even when viewed in a light most favorable to the district court, is legally insufficient to support the trial court's findings. *In re Sonnenreich*, 2004 UT 3, ¶45 n.14, 86 P.3d 712

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<sup>2</sup> "Defendant does properly recite facts from the record (beginning on page 8 of his Brief) in support of his claim that the findings of the Court...were not supported by the evidence...." (Pg. 3, Brief of Appellee)



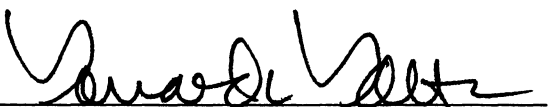
## CONCLUSION

The trial court judgment was wrong on both counts: The REPC was not ambiguous, and it was error to admit extrinsic evidence that altered or varied its express terms. If the REPC was ambiguous, it was error to exclude relevant extrinsic evidence because it resulted in findings that were not supported by the evidence and, therefore, clearly erroneous.

For the foregoing, additional reasons, the trial court's Memorandum Decision (R. 095) should be REVERSED and the Order and Judgment (R. 139) VACATED.

DATED this 6th day of October, 2008.

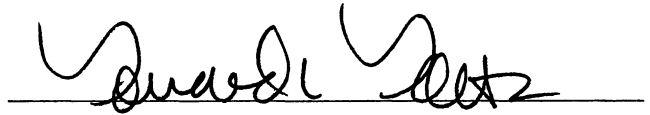
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## CERTIFICATE OF SERVICE

THIS WILL CERTIFY that true and correct copies of the within and foregoing "Appellant's Reply Brief" were mailed, First Class, postage prepaid, this 6th day of October, 2008, to:

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A handwritten signature in black ink, appearing to read "Michael Olmstead", is written over a horizontal line.